(3)

No. 01-758

IN THE

Supreme Court of the United States

UNITED PARCEL SERVICE, INC.,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

In its petition for a writ of certiorari, United Parcel Service, Inc. ("UPS") demonstrated that the decision of the Sixth Circuit below conflicts with the law of every other circuit concerning whether a physical limitation that precludes an employee from performing a single job, but not a class or broad range of jobs, can constitute a disability under the Americans with Disabilities Act of 1990 (the "ADA"). UPS also demonstrated that this Court had already granted certiorari in another case, also originating in the Sixth Circuit, that involved the same question. This Court has now decided that other case in a manner that starkly highlights the error in the Sixth Circuit's reasoning and holding in this case.

On January 8, 2002, this Court issued its unanimous decision in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 122 S. Ct. 681 (2002), which among other things reaffirmed the principle that "a claimant would be required to show an inability to work in a 'broad range of jobs,' rather than a specific job," in order to prove that he or she is substantially limited (and thus disabled) in working. *Id.* at 693 (citing *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 492 (1999)). *Toyota* thus conclusively refutes the Sixth Circuit's erroneous interpretation of the ADA, which permitted plaintiffs to establish disability by showing an inability to perform a single job. Just as this Court rejected the Sixth Circuit's erroneous interpretation of the ADA in that case, so too the Sixth Circuit's decision below must be vacated and the case remanded for reconsideration in light of this Court's ruling in *Toyota*.

I. *Toyota* Disposes Of The Question Presented In This Case

The question before this Court in *Toyota* was whether an employee who is unable to perform certain physical tasks associated with a job, and thus cannot perform that particular job, has a disability cognizable under the ADA. 122 S. Ct. at 686. The plaintiff in *Toyota* alleged that she was substantially limited in the major life activity of "performing manual tasks," and thus disabled under the ADA, because her carpal tunnel syndrome and other ailments prevented her from performing her assembly line job. The Sixth Circuit reversed the district court's grant of summary judgment in favor of the employer, concluding that the plaintiff could establish a substantial limitation in "performing manual tasks" by showing that she could not perform certain manual tasks associated with a particular job. *Id.* at 687-88.

The glaring flaw in the Sixth Circuit's *Toyota* decision, as noted by Judge Boggs in dissent in that case, was that it enabled employees to sidestep prior decisions of this Court, including *Sutton*, which require proof of exclusion from a broad range of jobs before an employee can be deemed substantially limited in the major life activity of working. *See Williams v. Toyota Motor Mfg., Kentucky, Inc.*, 224 F.3d 840, 847 (6th Cir. 2000) (Boggs, J., concurring in part and dissenting in part), *rev'd*, 122 S. Ct. 681 (2002). In effect, the Sixth Circuit had created a new hybrid class of disability that was inconsistent with the ADA, its regulations, and the overwhelming weight of judicial opinion. *See id.*

This Court flatly rejected the Sixth Circuit's approach in *Toyota*. Most significantly for present purposes, this Court squarely held that

where the alleged major life activity at issue is working, "the statutory phrase 'substantially limits' requires . . . that plaintiffs allege that they are unable to work in a broad class of jobs"; a mere "inability to work in . . . a specific job" does not suffice. *Toyota*, 122 S. Ct. at 692-93 (citation omitted).

This unambiguous holding is directly relevant to, and conclusively resolves in UPS's favor, the question presented in UPS's petition:

> Whether an impairment that limits an individual's ability to perform one particular job can constitute a "disability" under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(2)(A), even if there has been no finding that the plaintiff has been excluded from a class of jobs or a sufficiently broad range of jobs to establish a substantial limitation on the "major life activity" of "working."

Pet. i. Because *Toyota* disposes of the question presented in this case in a manner favorable to UPS, the petition should be granted and the judgment below vacated and remanded for reconsideration in light of *Toyota*.

II. The EEOC Misreads The Decision Below

Conceding, as it must, that UPS's view of the law is correct, the EEOC attempts to defend the judgment below by obfuscating the Sixth Circuit's clear holding. As demonstrated in the petition, the Sixth Circuit in this case (in keeping with its approach in the *Toyota* case) predicated its disability determination on what it viewed as "the substantial limitations [Woods's] allergy placed on his ability to perform his job." Pet. App. 9a. Notwithstanding this clear expression of the Sixth Circuit's holding, however, the

EEOC opines that the Sixth Circuit did not base its holding "solely on Woods's difficulty in performing his job for UPS." Opp. 8. Instead, the EEOC points to the Sixth Circuit's recitation of the EEOC's allegations (Opp. 8-9), and suggests that this recitation constitutes an implied *holding* that Woods was also disabled for reasons independent of his alleged disability in working. The EEOC's characterization of the decision below does not withstand analysis.

Because the EEOC labors so mightily to distort the Sixth Circuit's holding, it is helpful to review the actual words used by the court below. The Sixth Circuit's entire discussion of the disability issue is contained in the following passage:

> The EEOC insists that Woods was disabled while in Texas because his allergies were so severe as to impair his ability to breathe and to care for himself. There is testimony in the record which indicates that Woods's reactions to the allergen were steadily worsening, and that by the time he requested the transfer he rarely left home and spent nearly all of his non-working hours in bed. His wife assumed responsibility for his correspondence and household duties, while he suffered with nasal and bronchial congestion, swollen eyes and nose, rashes and fever blisters over large areas of his body, fatigue, fever, and depression. UPS counters that Woods cannot be viewed as disabled because he was able to work his regular hours without accommodation while in Texas, and because he was admittedly no longer disabled once he moved to northern Kentucky. However, on the basis of the evidence

> noted above, Woods's letter to Smith noting his severe allergies specific to Central Texas and requesting a transfer, and his physician's letter stating that effective allergy medication would threaten Woods's safe operation of his truck, *we conclude that a reasonable jury could find that Woods was properly "disabled" under the statute due to the substantial limitations his allergy placed on his ability to perform his job* while in Texas, the place where he sought the accommodation of a relocation.

Pet. App. 9a-10a (emphasis added).

This passage sets forth the Sixth Circuit's reasoning and holding with unmistakable clarity. After summarizing both parties' positions and reciting the evidence and arguments on which they were based, the court announced its decision: "*[W]e conclude* that a reasonable jury could find that Woods was properly 'disabled' under the statute due to the substantial limitations that his allergy placed *on his ability to perform his job* . . . ." Pet. App. 9a (emphases added). This is the *only* point in the critical passage where the court expresses its holding on the disability issue, and that holding is unambiguously and exclusively predicated on the court's conclusion that Woods's impairment imposed "limitations . . . on his ability to perform his job." *Id.*

This clear holding is entirely consistent with the Sixth Circuit's earlier holding in *Toyota*, because it rests upon the erroneous proposition that limitations on an individual's ability to perform tasks associated with a particular job can suffice to prove a disability. That erroneous proposition was expressly considered, and ex-

pressly rejected, by this Court in *Toyota*. The same result is required here.

III. The EEOC's Remaining Arguments Are Equally Unavailing

The EEOC retreats to the fall-back position that even if the Sixth Circuit erred as a matter of law, "that would not be a sufficient reason to grant plenary review." Opp. 10. The EEOC seems to suggest that because other Sixth Circuit decisions may have applied the correct rule of law in this situation, the contrary approach followed by the panel below is merely an "intra-circuit conflict[]." *Id.* That contention is frivolous. As shown in the petition and in this reply (Pet. 9-11; pp. 1-5, *supra*), the decision below conflicts with the decisions of *every other* circuit, and with this Court's decision in *Toyota*.

Moreover, the EEOC ignores the fact that although UPS seeks plenary review as an alternative form of relief, the primary relief sought in the petition is a grant of certiorari accompanied by vacatur of the opinion below and a remand in light of *Toyota*. Pet. 1, 14. Where, as here, a court of appeals has announced and applied a rule of law that is squarely at odds with an intervening decision of this Court, there is no justification whatsoever for allowing the decision of the lower court to stand.

The EEOC also contends that a remand would be futile, because in its view the judgment below is not likely to be altered. Opp. 11 (citing EEOC Summ. J. Br. 7-11). Once again, the EEOC is mistaken. Indeed, the deposition testimony of Woods himself demonstrates that, as of 1994 (the year in which he sought a transfer), Woods was taking the medication Claritin, which improved his condition without causing the

drowsiness that would inhibit his ability to perform his job for UPS. C.A. App. 170-71, 173-77, 179-84. If this Court remands the case to the Sixth Circuit, there is a high probability that the judgment will be different in light of Woods's own admissions, which establish the absence of a disability at the time he sought a transfer.

Indeed, this Court's decision in *Toyota* sheds considerable light on the alternative grounds proffered by the EEOC, and confirms that UPS is likely to prevail on those grounds as well. *Toyota* held that the definition of "disability" must "be interpreted strictly to create a demanding standard for qualifying as disabled." 122 S. Ct. at 691. Moreover, the *Toyota* Court held that, in order to support a claim of disability status, "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term." *Id.* Neither the district court nor the court of appeals had the benefit of this Court's guidance in *Toyota* when they originally considered Woods's disability claims, but this Court's clarification of the stringent test for establishing a disability is highly relevant to those claims because the evidence shows that the impact of Woods's impairment was neither "long-term" nor "severely restrict[ing]" at the time his claim arose. Thus, far from presenting a basis for denial of review, the alternative (and as-yet unresolved) grounds proffered by the EEOC serve only to confirm the propriety of a remand to permit the lower courts to consider the impact of this Court's *Toyota* decision on the EEOC's claims.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the Sixth Circuit vacated, and the case remanded for reconsideration in light of this Court's *Toyota* decision. In the alternative, the petition should be granted and the case set for full briefing and argument.

Respectfully submitted.

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